



The Attorney General of Texas

November 16, 1979

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Honorable John H. Poerner, Chairman
Railroad Commission of Texas
P. O. Drawer 12967
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Opinion No. MW-86

Re: Duty of Railroad Commission
to set rates over carriers operating
under seasonal agricultural licenses
issued under section 5b of article
911b, V.T.C.S.

Dear Mr. Poerner:

You have asked the following question:

In the administration of H.B. 1418 (new section 5b in the Motor Carrier Act), is it the Commission's duty to set rates to be charged by persons transporting property under the authority of a seasonal agricultural license?

Article 911b, V.T.C.S., authorizes the Railroad Commission to regulate specialized motor carriers, defined as persons who operate any motor propelled vehicle to transport "over irregular routes or irregular schedules, for compensation and for the general public ... property requiring specialized equipment in the transportation and handling thereof. ..." Sec. 1(i). Specialized motor carriers also include "those carriers who engage or desire to engage exclusively in the transportation of ... agricultural products in their natural state. ..." Id.

House Bill No. 1418, enacted by the sixty sixth legislature, amends article 911b to permit issuance of a seasonal agricultural license to persons transporting eligible agricultural commodities in their natural state over limited distances. Sec. 5b. The holder of a seasonal agricultural license is not required to obtain a certificate of convenience and necessity, and the license may be issued without notice, hearing, or proof of public convenience and necessity.

Section 4 of article 911b states the powers and duties of the Railroad Commission with respect to motor carriers:

The Commission is hereby vested with power and authority and it is hereby made its duty to supervise and regulate the transportation of property for compensation or hire by motor vehicle on any public highway in this State, to fix, prescribe or approve the maximum or minimum or maximum and minimum rates, fares and charges of each motor carrier in accordance with the specific provisions herein contained. . . .

Since specialized motor carriers are "motor carriers" as defined by section 1(g), they are subject to regulation under section 4. Cf. Attorney General Opinion O-3994 (1941) ("motor carrier" in section 4 includes common carriers and contract carriers). House Bill No. 1418 does not exempt persons transporting property under a seasonal agricultural license from regulation under section 4. Repeals by implication are not favored. Hankins v. Connally, 206 S.W.2d 89 (Tex. Civ. App. — Waco 1947, writ ref'd n.r.e.). In our opinion, the Railroad Commission still has the authority and the duty "to fix, prescribe or approve" rates charged by specialized motor carriers under a seasonal agricultural license. Although the rates are often fixed by the certificates of convenience and necessity, see Transportation League, Inc. v. Morgan Express, 436 S.W.2d 378 (Tex. Civ. App. — Dallas 1969, writ ref'd n.r.e.), the Railroad Commission is not limited to that method of prescribing them. See Sproles Motor Freight Lines v. Railroad Commission, 157 S.W.2d 949 (Tex. Civ. App. — Galveston 1941, writ ref'd w.o.m.).

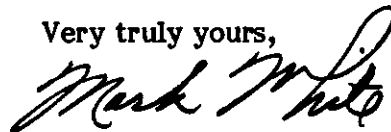
It has been suggested that rate-making is inappropriate since the purpose of House Bill 1418 was to avoid lengthy proceedings and inflexible regulatory schemes; however, the rate-making duties of the Commission provide great flexibility. It is authorized to establish either maximum or minimum rates or both. Its discretion is sufficiently broad to permit it to establish rates which will avoid the onerous burdens the bill was designed to prevent.

In our opinion, it is your duty to set rates to be charged by persons transporting property under the authority of a seasonal agricultural license.

S U M M A R Y

The Railroad Commission has the authority and the duty under article 911b, section 4, to set rates for a specialized motor carrier operating under the authority of a seasonal agricultural license.

Very truly yours,



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